

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ESTHER RIVERA CRUZ,

Plaintiff

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant

CIVIL NO.: 07-2248 (ADC/MEL)

REPORT AND RECOMMENDATION

On February 8, 2008, plaintiff filed the complaint in this case requesting review of the Commissioner of Social Security's ("Commissioner") decision denying her application for disability insurance benefits. (Docket No. 3.) The Clerk of Court issued summons on March 18, 2008. (Docket No. 6.) On March 19, 2008, this case was referred to the undersigned for a report and recommendation. (Docket No. 7.)

On September 22, 2008, the court ordered plaintiff to show good cause, on or before September 30, 2008, as to why the complaint should not be dismissed for her failure to serve summons within the term provided by Fed. R. Civ. Proc. 4(m) ("Rule 4(m)"), insofar the record did not show that plaintiff had served summons upon defendant, nor had plaintiff so demonstrated. (See Docket No. 9.)¹ The court also forewarned plaintiff that failure to show good cause would result in

¹ Rule 4(m) states, in pertinent part, as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed.R.Civ.Proc. 4(m). This rule requires district courts to provide notice of impending dismissal before actually dismissing the action *sua sponte*. See Ruiz-Varela v. Sánchez-Vélez, 814 F.2d 821 (1st Cir. 1987).

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the dismissal without prejudice of the complaint, as contemplated by Rule 4(m). Id.

Plaintiff has failed to comply with the order to show cause entered on September 22, 2008. Furthermore, as of today, the record still fails to reveal that the defendant has been served with summons. Therefore, it is recommended that the complaint be dismissed without prejudice.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 1st day of October, 2008.

s/Marcos E. López
U.S. MAGISTRATE JUDGE